IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 400 OF 2002 AND C.A. NO. 356/2002.

Shri Cajetano Cordeiro,
D-3, Villa - 1,
Paradise on Earth,
Behind P.D.A. Colony,
Porvorim, Goa. ... Petitioner.

VERSUS

1. Joe Mathias,
   Mathias Plaza,
   18th June Road,
   Panaji, Goa.

2. Smt. Erminia Cruz,
   wife of Shri Cajetano Cordeiro,
   D-3, Villa - 1,
   Paradise on Earth,
   Behind P.D.A. Colony,
   Porvorim, Goa. ... Respondents.

Mr. S.G. Dessai, Senior Advocate with Mr. V. Menezes, Advocate for the Petitioner.

Mr. V.B. Nadkarni, Senior Advocate with Mr. Y.V. Nadkarni, Advocate for the Respondent No.1.

Mr. M.N. Zambre with Mr. F.M. Reis, Advocates for the Respondent No.2.

CORAM: D. G. DESHPANDE, J.

DATE: 20TH FEBRUARY, 2003.

ORAL ORDER:

Heard the Advocates for the Petitioner and the Respondents.

2. The petitioner was defendant in the Suit filed before the Court at Panaji. After his appearance in the Court, for which he had also filed a Caveat, he

filed an application for rejection of the plaint under Order VII, Rule 11 of C.P.C. This is an application filed by the petitioner which is running into five paras. In the second para it is stated that he has reproduced para 41 of the plaint where the plaintiff has stated that the defendants have their place of residence within the jurisdiction of the Honourable Court. The objection of the defendants starts from para 3 wherein he states that in the cause title the plaintiff has shown the residence of the defendants as "D-3 Villa-1, Paradise on Earth, Behind P.D.A. Colony, Porvorim, Goa" which is within the jurisdiction of the Court of C.J.S.D., Mapusa. In para 4 it is stated that "On the very averments made in the plaint, this Hon'ble Court has no jurisdiction to entertain and decide the suit".

3. After this application was filed by the defendants raising objection under Order VII, Rule 11 of C.P.C., the plaintiff applied for amendment of the plaint and the application was allowed. By virtue of the amendment, the plaintiff reiterated his stand that the defendants are residing at Panaji and gave particulars of their address.

4. The objection raised by the defendants under Order VII, Rule 11 was rejected by the Trial Court and hence this petition.

5. Counsel for the petitioner contended that if upon bare reading of the plaint it did not reveal the cause of action or it did not reveal that the Court had jurisdiction to entertain the Suit, the plaint ought to have been rejected under Order VII, Rule 11. According to him, when in the cause title of the plaint the address of the defendant is given as "beyond the jurisdiction of the Panaji Court", and when the petitioner had lodged a Caveat upon the plaintiff on 15.7.2002 giving his address beyond the jurisdiction of Panaji Court, then on that ground itself the plaint should have been rejected. Various provisions of C.P.C. have been quoted before me to the effect that if there is a defect in the plaint and if the Suit is not legally and properly instituted after complying with the provisions of Order VII, Rule 11 that the Suit was liable to be dismissed or liable to be rejected.

6. I do not find substance in any of the submissions made by the counsel for the petitioner. He wants the Court to totally disregard the allegations made in para 41 of the plaint. He wants the Court to reject the plaint only because in the title the plaintiff has given the address of the defendant as beyond the jurisdiction of the Panaji Court. What matters for deciding the issue of jurisdiction is the material allegations and averments in the plaint and

therefore when in the plaint in para 41 the plaintiff specifically averred that the defendant resides within the jurisdiction of the Court, by no stretch of imagination, it can be said, disregarding those averments in para 41 that the plaint should be rejected by the Court only because in the cause title the address of the defendant is shown somewhere else beyond the jurisdiction of the Panaji Court. In fact, a proper reading of Order VII, Rule 11 C.P.C. shows that the objection to jurisdiction does not come or fall within the scope and ambit of Order VII, Rule 11. No doubt, the defendant can raise objection to the jurisdiction at the earliest opportunity and if such objection is raised, the Court has to decide the same. But Order VII, Rule 11 speaks of reading of the plaint as it is and taking a decision whether the plaint is to be rejected. When therefore, in the present case, the plaint clearly made allegations and made averments showing the jurisdiction of the Court in para 41, the Court was justified in not rejecting the plaint under the said provision. If, at all, according to the defendants they reside beyond the jurisdiction of Panaji Court, then that would be a question of fact because there is a specific averment of the plaintiff to the contrary and that question cannot be decided without recording evidence. There is no merit in the Writ Petition.

7. The Petition is dismissed with costs. Civil Application accordingly stands disposed of.

sl. **D.G. DESHPANDE, J.**